U.S. Department of Labor

Benefits Review Board
P.O. Box 37601
Washington, DC 20013-7601

BRB No. 16-0114 BLA

RICHARD C. JOHNSTON	)	
	)	
Claimant-Petitioner	)	
	)	
v.	)	
	)	
OLGA COAL COMPANY	)	
	)	
and	)	DATE ISSUED: 10/20/2016
	)	
WEST VIRGINIA CWP FUND	)	
	)	
Employer/Carrier-Respondents	)	
	)	
DIRECTOR, OFFICE OF WORKERS' COMPENSATION PROGRAMS, UNITED STATES DEPARTMENT OF LABOR	)	
	)	
Party-in-Interest	)	DECISION and ORDER

Appeal of the Decision and Order Denying Benefits of Pamela J. Lakes, Administrative Law Judge, United States Department of Labor.

Richard C. Johnston, Welch, West Virginia, *pro se*.

Ashley M. Harman (Jackson Kelly PLLC), Morgantown, West Virginia, for employer/carrier.

Before: HALL, Chief Administrative Appeals Judge, GILLIGAN and ROLFE, Administrative Appeals Judges.

PER CURIAM:

Claimant, without the assistance of counsel,[1] appeals the Decision and Order Denying Benefits (2013-BLA-05014) of Administrative Law Judge Pamela J. Lakes rendered on a claim filed pursuant to the provisions of the Black Lung Benefits Act, as amended, 30 U.S.C. §§901-944 (2012) (the Act). This case involves a subsequent claim filed on April 14, 2011.[2]

After crediting claimant with twenty-nine years of underground coal mine employment, the administrative law judge initially found that the new evidence established the existence of pneumoconiosis pursuant to 20 C.F.R. §718.202(a) and, therefore, found that claimant established a change in an applicable condition of entitlement pursuant to 20 C.F.R. §725.309(c).[3] Considering the merits of the claim, the administrative law judge found that claimant was unable to establish total pulmonary or respiratory disability pursuant to 20 C.F.R. §718.204(b)(2) and, therefore, was unable to

[1] Cindy Viers, a benefits counselor with Stone Mountain Health Services of Oakwood, Virginia, requested, on behalf of claimant, that the Board review the administrative law judge's decision, but Ms. Viers is not representing claimant on appeal. *See Shelton v. Claude V. Keene Trucking Co.*, 19 BLR 1-88 (1995) (Order).

[2] Claimant filed two prior claims for benefits. Claimant's first claim, filed on October 28, 1988, was denied by the district director in a proposed Decision and Order issued on October 7, 1987 because claimant did not establish any element of entitlement. Director's Exhibit 1. Claimant took no further action on that claim. Claimant's second claim, filed on October 23, 2007, was denied by the district director in a proposed Decision and Order issued on April 30, 2008, for failure to establish any element of entitlement under 20 C.F.R. Part 718. Director's Exhibit 2. Claimant took no further action until he filed the current claim. Director's Exhibit 4.

[3] Relevant to this claim, where a miner files a claim for benefits more than one year after the final denial of a previous claim, the subsequent claim must also be denied unless the administrative law judge finds that "one of the applicable conditions of entitlement . . . has changed since the date upon which the order denying the prior claim became final." 20 C.F.R. §725.309(c); *White v. New White Coal Co.*, 23 BLR 1-1, 1-3 (2004). The "applicable conditions of entitlement" are "those conditions upon which the prior denial was based." 20 C.F.R. §725.309(c)(3). Claimant's prior claim was denied because he failed to establish any of the elements of entitlement under 20 C.F.R. Part 718. Director's Exhibit 2. Thus, in order to obtain review of the merits of his claim, claimant had to submit new evidence establishing one of the elements of entitlement. 20 C.F.R. §725.309(c)(3), (4).

invoke the rebuttable presumption at Section 411(c)(4), 30 U.S.C. §921(c)(4),[4] or establish entitlement to benefits under 20 C.F.R. Part 718 without the aid of the Section 411(c)(4) presumption. Accordingly, the administrative law judge denied benefits.

On appeal, claimant generally contends that the administrative law judge erred in denying benefits. Employer responds in support of the administrative law judge's denial of benefits.[5] The Director, Office of Workers' Compensation Programs, has not filed a response brief.[6]

In an appeal filed by a claimant without the assistance of counsel, the Board considers whether the Decision and Order below is supported by substantial evidence. *McFall v. Jewell Ridge Coal Corp.*, 12 BLR 1-176 (1989); *Stark v. Director, OWCP*, 9 BLR 1-36 (1986). We must affirm the administrative law judge's Decision and Order if the findings of fact and conclusions of law are supported by substantial evidence, are rational, and are consistent with applicable law.[7] 33 U.S.C. §921(b)(3), as incorporated by 30 U.S.C. §932(a); *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965).

To be entitled to benefits under the Act, claimant must establish the existence of pneumoconiosis, that the pneumoconiosis arose out of coal mine employment, a totally disabling respiratory or pulmonary impairment, and that the totally disabling respiratory

[4] Section 411(c)(4) of the Act provides a rebuttable presumption that a miner is totally disabled due to pneumoconiosis in cases where fifteen or more years of qualifying coal mine employment and a totally disabling respiratory impairment are established. 30 U.S.C. § 921(c)(4) (2012); *see* 20 C.F.R. §718.305. To invoke the Section 411(c)(4) presumption, claimant must establish that he had at least fifteen years of "employment in one or more underground coal mines," or coal mine employment in conditions that were "substantially similar to conditions in an underground mine." 30 U.S.C. §921(c)(4).

[5] In its response brief, employer notes its disagreement with the administrative law judge's determination that the evidence established the existence of pneumoconiosis. Employer, did not specifically challenge the administrative law judge's findings, but stated that it is preserving this issue for appeal. Employer's Brief at 1.

[6] We affirm, as unchallenged on appeal, the administrative law judge's finding of twenty-nine years of underground coal mine employment. *See Skrack v. Island Creek Coal Co.*, 6 BLR 1-710, 1-711 (1983).

[7] This case arises within the jurisdiction of the United States Court of Appeals for the Fourth Circuit because claimant's coal mine employment was in West Virginia. *See Shupe v. Director, OWCP*, 12 BLR 1-200, 1-202 (1989) (en banc); Director's Exhibit 3.

or pulmonary impairment is due to pneumoconiosis. 30 U.S.C. §901; 20 C.F.R. §§718.3, 718.202, 718.203, 718.204. Failure to establish any one of these elements precludes an award of benefits. *Anderson v. Valley Camp of Utah, Inc.*, 12 BLR 1-111, 1-112 (1989); *Trent v. Director, OWCP*, 11 BLR 1-26, 1-27 (1987); *Perry v. Director, OWCP*, 9 BLR 1-1 (1986) (en banc).

The regulations provide that a miner shall be considered totally disabled if his pulmonary or respiratory impairment, standing alone, prevents him from performing his usual coal mine work, and comparable gainful work. *See* 20 C.F.R. §718.204(b)(1). In the absence of contrary probative evidence, a miner's disability is established by: 1) pulmonary function studies showing values equal to or less than those listed in 20 C.F.R. Part 718, Appendix B; 2) arterial blood gas studies showing values equal to or less than those listed in 20 C.F.R. Part 718, Appendix C; 3) the miner has pneumoconiosis and is shown by the evidence to suffer from cor pulmonale with right-sided congestive heart failure; or 4) a physician exercising reasoned medical judgment concludes that a miner's respiratory or pulmonary condition is totally disabling.[8] 20 C.F.R. §718.204(b)(2)(i)-(iv). If total disability is established under one or more subsections, the administrative law judge must weigh the evidence supportive of a finding of total disability against the contrary probative evidence of record to determine whether total disability has been established by a preponderance of the evidence. *See Fields v. Island Creek Coal Co.*, 10 BLR 1-19, 1-20-21 (1987).

Pursuant to 20 C.F.R. §718.204(b)(2)(i), the administrative law judge considered the results of five pulmonary function studies dated November 14, 2011, April 19, 2012, February 20, 2013, March 19, 2013, and June 9, 2014, submitted with the current claim, as well as two studies submitted with claimant's earlier claims.[9] Decision and Order at

[8] A review of the record reveals no evidence of complicated pneumoconiosis. Consequently, claimant cannot invoke the irrebuttable presumption that he is totally disabled due to pneumoconiosis under Section 411(c)(3) of the Act. 30 U.S.C. §921(c)(3), as implemented by 20 C.F.R. §718.304.

[9] An administrative law judge must determine a miner's "correct height" in order to properly evaluate whether pulmonary function studies are qualifying for total disability under the regulations. *Toler v. E. Assoc. Coal Corp.*, 43 F.3d 109, 114, 19 BLR 2-70, 2-81 (4th Cir. 1995). If there are substantial differences in the recorded heights among the pulmonary function studies, the administrative law judge must make a factual finding to determine claimant's actual height. *Protopappas v. Director, OWCP*, 6 BLR 1-221, 1-223 (1983). Here, the administrative law judge noted that the pulmonary function studies were based on differing heights for claimant and, therefore, permissibly relied on the average height of 70.2 inches for purposes of applying the table values at 20 C.F.R. Part

11. The administrative law judge initially found that only the pre-bronchodilator portion of Dr. Fino's April 19, 2012 pulmonary function study yielded qualifying values.[10] Decision and Order at 11; Director's Exhibit 28. The remainder of the pulmonary function studies, including those submitted with the current and prior claims, yielded non-qualifying results.[11] The administrative law judge further found, however, that Drs. Rasmussen, Fino, and Castle each opined that the pulmonary function studies associated with their examinations were invalid.[12] Decision and Order at 11; Director's Exhibits 12, 28; Employer's Exhibit 6. Similarly, the results of the two remaining studies, conducted on February 20, 2013 and June 9, 2014 at Oakwood Respiratory Clinic, were called into question by the administering technicians, who noted that the results were claimant's "best effort," but that claimant was very short of breath during the tests and that claimant was hard of hearing, making it difficult for him to understand the instructions. Claimant's Exhibit 6.

Based on her consideration of all the pulmonary function study evidence, including the physicians' comments regarding the studies, the administrative law judge determined that all of the studies were entitled to diminished weight. Decision and Order at 12. Alternatively, the administrative law judge found that, "to the extent that the [pulmonary function studies] may be considered, the preponderance of the values were

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718, Appendix B. *See K.J.M.* [*Meade*] *v. Clinchfield Coal Co.*, 24 BLR 1-40, 1-44 (2008); Decision and Order at 11.

[10] A "qualifying" pulmonary function study yields values that are equal to or less than the applicable table values listed in Appendix B of 20 C.F.R. Part 718. A "non-qualifying" study exceeds those values. 20 C.F.R. §718.204(b)(2)(i).

[11] Based on the values yielded by the 1988 and 2007 pulmonary function studies, the administrative law judge correctly found that these older studies were non-qualifying. 20 C.F.R. Part 718, Appendix B; Decision and Order at 12; Director's Exhibits 1, 2.

[12] Dr. Rasmussen stated that his November 30, 2011 pulmonary function study was invalid because claimant failed to complete the forced expiratory maneuver beyond a few seconds and also did not achieve reproducible values after multiple attempts. Director's Exhibit 12. In finding his April 19, 2012 pulmonary function study invalid, Dr. Fino stated that there was a premature termination of exhalation and a lack of reproducibility in the expiratory tracings. Director's Exhibit 28. Similarly, Dr. Castle stated that his March 19, 2013 pulmonary function study was invalid because of less than maximal effort, lack of reproducibility, and inadequate exhalation time. Employer's Exhibit 6.

[sic] non[-]qualifying." *Id.* Thus, the administrative law judge permissibly found that the pulmonary function studies, standing alone, were insufficient to establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). 20 C.F.R. Part 718, App. B; *Winchester v. Director, OWCP*, 9 BLR 1-177, 1-178 (1986); *Burich v. Jones and Laughlin Steel Corp*., 6 BLR 1-1189, 1-1191 (1984). As it is supported by substantial evidence, we affirm the administrative law judge's finding that claimant has not established total disability pursuant to 20 C.F.R. §718.204(b)(2)(i). *Compton v. Island Creek Coal Co.*, 211 F.3d 203, 207-208, 22 BLR 2-162, 2-168 (4th Cir. 2000).

Pursuant to 20 C.F.R. §718.204(b)(2)(ii), the administrative law judge considered four resting blood gas studies submitted with the current claim, administered on November 11, 2011, April 19, 2013, March 19, 2013, and August 6, 2014, as well as two resting blood gas studies submitted with claimant's prior claims.[13] Turning first to the current claim evidence, the administrative law judge found that Dr. Rasmussen's November 14, 2011 study, and Dr. Rago's August 6, 2014 study, yielded qualifying values,[14] while the remaining two studies, dated April 19, 2012 and March 19, 2013, yielded non-qualifying results.[15] Decision and Order at 12-13; Director's Exhibits 12, 28; Claimant's Exhibit 7; Employer's Exhibit 6.

Noting that the studies were taken in four consecutive years, and that there were only eighteen months between the two most recent studies, the administrative law judge permissibly found the studies to be of equal probative value. *See Allen v. Director, OWCP*, 69 F.3d 532, 20 BLR 2-97 (4th Cir. 1995); *Wilt v. Wolverine Mining Co.*, 14 BLR 1-70 (1990); Decision and Order at 13. Having found that two of the blood gas studies produced qualifying values and two did not, the administrative law judge rationally found that the blood gas study evidence submitted with the current claim was in equipoise, and neither supports nor refutes total disability. *See Director, OWCP v. Greenwich Collieries* [*Ondecko*], 512 U.S. 267, 280-81, 18 BLR 2A-1, 2A-12 (1994);

[13] The administrative law judge correctly noted that none of the blood gas studies included an exercise study. Decision and Order at 13.

[14] A "qualifying" blood gas study yields values that are equal to or less than the appropriate values set out in the table at 20 C.F.R. Part 718, Appendix C. A "non-qualifying" study yields values that exceed those in the table. 20 C.F.R. §718.204(b)(2)(ii).

[15] Dr. Fino administered the April 19, 2012 blood gas study, which yielded non-qualifying values at rest, Director's Exhibit 28, and Dr. Castle administered the March 19, 2013 blood gas study, which also yielded non-qualifying values at rest, Employer's Exhibit 6.

Decision and Order at 13. The administrative law judge further properly found that the two blood gas studies submitted with the prior claims were non-qualifying. *Id*. Consequently, the administrative law judge permissibly concluded that the preponderance of the blood gas study evidence, standing alone, does not establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(ii). *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997). We affirm these findings as supported by substantial evidence.

Because the record contains no evidence that claimant suffers from cor pulmonale with right-sided congestive heart failure, the administrative law judge correctly found that claimant cannot establish total disability pursuant to 20 C.F.R. §718.204(b)(2)(iii). Decision and Order at 13.

Evaluating the medical opinion evidence pursuant to 20 C.F.R. §718.204(b)(2)(iv), the administrative law judge considered the opinions of Drs. Rasmussen, Castle, Fino, and Rago.[16] Decision and Order at 15-18; Director's Exhibits 12, 42, 28; Employer's Exhibits 6, 11, 14, 16, 17; Claimant's Exhibit 9. The administrative law judge correctly found that Drs. Rasmussen,[17] Castle[18] and Fino[19] each opined that claimant retains the

[16] Initially, the administrative law judge found that Drs. Fino and Castle are Board-certified pulmonologists, but Drs. Rasmussen and Rago are not Board-certified pulmonologists. Decision and Order at 14. However, the administrative law judge noted that Dr. Rasmussen possessed expertise specific to issues related to coal workers' pneumoconiosis and Dr. Rago is claimant's treating physician whose opinion may be entitled to special consideration pursuant to 20 C.F.R. §718.104(d). *Id*.

[17] As summarized by the administrative law judge, Dr. Rasmussen initially opined that "[b]ased on the [claimant's] resting blood gas, he would not be capable of performing his regular coal mine employment." Decision and Order at 15; Director's Exhibit 12. However, Dr. Rasmussen cautioned that "[r]esting blood gases, of course, are unreliable to assess lung function." Director's Exhibit 12. In a supplemental report, following his review of additional medical evidence, including the opinions of Drs. Fino and Castle, Dr. Rasmussen stated that he agreed with Drs. Fino and Castle that there is insufficient evidence to consider claimant disabled from his previous job. Decision and Order at 15; Director's Exhibit 42.

[18] The administrative law judge correctly noted that Dr. Castle examined claimant, reviewed medical evidence, and opined that claimant retains the respiratory capacity to perform his usual coal mine employment. Decision and Order at 16; Employer's Exhibit 6. Dr. Castle further opined, however, that "it is likely that [claimant] is totally disabled as a whole man because of his multiple medical problems including bronchial asthma,

ability to perform his usual coal mine work from a pulmonary standpoint. Decision and Order at 15-16, 18. The administrative law judge found that, by contrast, Dr. Rago, claimant's longtime treating physician, was the only physician to opine that claimant suffers from a totally disabling respiratory impairment. Decision and Order at 16-18. Specifically, the administrative law judge found that, in a report dated September 17, 2014, Dr. Rago stated that claimant had worked as a coal miner for over thirty years, most recently as a "general inside worker doing a variety of tasks," and has a "pulmonary level of impairment [that] is 100 percent disabling in regards to his last coal mining job." Claimant's Exhibit 9; Decision and Order at 16-17. Further, the administrative law judge noted, Dr. Rago stated that he based his conclusion on his examinations and observations of claimant over their thirty-year doctor-patient relationship, as well as the results of claimant's August 6, 2014 qualifying blood gas study, and the February 20, 2013 and May 9, 2014 pulmonary function studies from Oakwood Respiratory Clinic. *Id.*

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exogenous obesity, and his musculoskeletal problems." *Id*. Based on his review of additional medical evidence, Dr. Castle provided a supplemental report in which he again stated that claimant has normal ventilatory function, but is very likely disabled as a whole man due to his bronchial asthma. Decision and Order at 16; Employer's Exhibit 17. During his deposition, Dr. Castle reiterated that, based on the results of his objective testing, claimant retains the respiratory capacity to perform his usual coal mine work, but is disabled due to his severe asthma. Employer's Exhibit 13 at 33-34. The administrative law judge permissibly discredited Dr. Castle's opinion, as unreasoned, because he did not explain his conclusion that claimant retains the respiratory capacity to perform his usual coal mine employment, in light of his opinion that claimant suffers from disabling bronchial asthma. *Milburn Colliery Co. v. Hicks*, 138 F.3d 524, 533, 21 BLR 2-323, 2-335 (4th Cir. 1998); *Sterling Smokeless Coal Co. v. Akers*, 131 F.3d 438, 441, 21 BLR 2-269, 2-275-76 (4th Cir. 1997); *Underwood v. Elkay Mining, Inc*., 105 F.3d 946, 21 BLR 2-23 (4th Cir. 1997).

[19] The administrative law judge noted that, based on his examination of claimant and his review of records, Dr. Fino stated that while claimant had a long history of asthma, he had no more than a minimal to mild restrictive type defect. Decision and Order at 15-16; Director's Exhibit 28 at 9. Further, the administrative law judge noted, Dr. Fino stated that he found no evidence of a respiratory impairment that would be severe enough to prevent claimant from returning to his usual coal mine employment. Decision and Order at 15-16; Director's Exhibit 28 at 10. Finally, the administrative law judge noted that, in a supplemental medical report, and during his deposition, following his review of additional medical evidence, Dr. Fino reiterated his opinion that there was no evidence of a respiratory impairment severe enough to be totally disabling. Decision and Order at 16; Employer's Exhibits 11, 16.

The administrative law judge rationally discounted Dr. Rago's opinion because, during his November 11, 2014 deposition, Dr. Rago stated that he was unaware of claimant's job duties as a general inside worker, and that he "didn't really pay any attention" to whether claimant was disabled or not, because it was not his job to determine disability. *See Lane v. Union Carbide Corp.*, 105 F.3d 166, 21 BLR 2-34 (4th Cir. 1997); *Clark v. Karst-Robbins Coal Co.*, 12 BLR 1-149 (1989) (en banc); *Fields*, 10 BLR at 1-22; Decision and Order at 17; Employer's Exhibit 14 at 13. The administrative law judge also discounted Dr. Rago's opinion, as was within her discretion, because Dr. Rago acknowledged that, aside from the August 6, 2014 blood gas study listed in his first report, he had not administered any other objective studies during his treatment of claimant. *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; Decision and Order at 17; Employer's Exhibit 14 at 10. Further, the administrative law judge permissibly found that the credibility of Dr. Rago's opinion was called into question because Dr. Rago "readily admitted" that he relied on claimant's own assessment of his degree of impairment to conclude that claimant does not retain the pulmonary capacity to return to his usual coal mine employment.[20] *See Hicks*, 138 F.3d at 533, 21 BLR at 2-335; *Akers*, 131 F.3d at 441, 21 BLR at 2-275-76; *McMath v. Director, OWCP*, 12 BLR 1-6, 1-10 (1988); Decision and Order at 17; Employer's Exhibit 14 at 14. The administrative law judge permissibly concluded that, while Dr. Rago was claimant's treating physician for many years, his opinion that claimant is totally disabled from a respiratory or pulmonary standpoint, is unreasoned and undocumented and entitled to little weight.[21] *See Hicks*, 138 F.3d at 536, 21 BLR at 2-341; *Akers*, 131 F.3d at 440-41, 21 BLR at 2-275-76; Decision and Order at 17-18.

The administrative law judge is empowered to weigh the medical evidence and to draw her own inferences therefrom, *see Grizzle v. Pickands Mather & Co.*, 994 F.2d 1093, 1096, 17 BLR 2-123, 2-126 (4th Cir. 1993), and the Board may not reweigh the evidence or substitute its own inferences on appeal. *Piney Mountain Coal Co. v. Mays*,

[20] Dr. Rago stated, "If the patient comes to me and says, 'Doc, I was found disabled because of pneumoconiosis,' it's not for me to determine whether it's true or not true or what. I just base it on the symptoms that I feel is [sic] attributed to pneumoconiosis, and treat the patient accordingly." Employer's Exhibit 14 at 14.

[21] The regulations state that a treating physician's opinion may be accorded controlling weight "[p]rovided that the weight given to the opinion of a miner's treating physician shall also be based on the credibility of the physician's opinion in light of its reasoning and documentation, other relevant evidence and the record as a whole." 20 C.F.R. §718.104(d)(5). Because the administrative law judge permissibly found Dr. Rago's opinion to be unreasoned, there was no need for the administrative law judge to further analyze Dr. Rago's opinion pursuant to 20 C.F.R. §718.104(d).

176 F.3d 753, 764, 21 BLR 2-587, 2-606 (4th Cir. 1999); *Clark*, 12 BLR at 1-155; *Anderson*, 12 BLR at 1-113. Because it is supported by substantial evidence, we affirm the administrative law judge's determination that the medical opinion evidence failed to establish total disability at 20 C.F.R. §718.204(b)(2)(iv).[22] *Compton*, 211 F.3d at 207-208, 22 BLR at 2-168.

Finally, considering all of the evidence relevant to total disability, *see Fields*, 10 BLR at 1-21; *Shedlock v. Bethlehem Mines Corp.*, 9 BLR 1-195 (1986), *aff'd on recon.*, 9 BLR 1-236 (1987) (en banc), the administrative law judge permissibly found that claimant failed to establish that he is incapable of performing his usual coal mine employment as a general inside laborer. Decision and Order at 19. Because claimant failed to establish total respiratory disability pursuant to 20 C.F.R. §718.204(b)(2), we affirm the administrative law judge's finding that claimant failed to establish invocation of the Section 411(c)(4) presumption of total disability due to pneumoconiosis. 30 U.S.C. § 921(c)(4) (2012); *see* 20 C.F.R. §718.305. Additionally, we affirm the administrative law judge's finding that because claimant did not established total disability, a necessary element of entitlement under 20 C.F.R. Part 718, claimant cannot establish entitlement to benefits under the regulatory criteria of Part 718.

[22] The administrative law judge also considered claimant's hospitalization and treatment records and found that, while they document that claimant suffered from asthma, they do not support a finding of total pulmonary or respiratory disability, pursuant to 20 C.F.R. §718.204(b)(2)(iv). Decision and Order at 18; Claimant's Exhibit 8; Employer's Exhibit 4. Further, the administrative law judge permissibly found that the opinions of Drs. Forehand and Vasudevan, submitted with claimant's prior claims, were insufficient to establish total disability, as neither physician definitively diagnosed a totally disabling respiratory or pulmonary impairment. Decision and Order at 18. Additionally, the administrative law judge permissibly found that their opinions were too remote in time to be an accurate indicator of claimant's current condition. *See Parsons v. Wolf Creek Collieries*, 23 BLR 1-29, 1-35 (2004) (en banc); *Workman v. E. Associated Coal Corp.*, 23 BLR 1-22, 1-27 (2004) (en banc); Decision and Order at 18.

Accordingly, the administrative law judge's Decision and Order Denying Benefits is affirmed.

SO ORDERED.

BETTY JEAN HALL, Chief
Administrative Appeals Judge

RYAN GILLIGAN
Administrative Appeals Judge

JONATHAN ROLFE
Administrative Appeals Judge